

## **MINUTES**

### **RILEY COUNTY PLANNING BOARD**

**Monday, April 12, 2004  
7:30 p.m.**

**Courthouse Plaza East  
Commission Meeting Room**

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Members Present: Jon Larson - Chair  
Buck Gehrt - Vice Chair  
Lorn Clement  
Tom Taul  
Rebecca Mosier

Staff Present: Monty Wedel - Planning Director; Bob Isaac - Planner; Keri Lane - Clerical Assistant.

Others Present: Sandra Sinn, Melinda Sinn, Greg Sinn, Carl Sinn, Eugene Sinn, Roger & Barbara Craft, David & Kathleen Soupene, Leon & Jennie Brown, Linda Weis, Glen & Nancy Sinn Nelson, Tom Finney, Gerald & Sue Ludwig, Randy & Korrina Holle, Pete & Sue Cohen, Kail Katzenmeier, Skip Pickering, Wayne Hoffman, Dick Seaton, Judy Love, Lee Rucker, and Bob Foote.

The minutes of the March 8, 2004 meeting were approved as presented.

The Report of Fees for the month of March 2004 was approved. The fees collected in March totaled \$1,225.00.

#### **DAVID SOUPENE – PLAT/REZONE**

Chairman Larson opened the public hearing for the request of David Soupene, petitioner, and David & Kathleen Soupene, owners, to rezone a tract of land from “G-1” (General Agricultural) to “A-5” (Single Family Residential) in Wildcat Township, Section 15 South, Range 6 East.

Bob Isaac, Planner, presented the staff report. Mr. Isaac explained that the subject site was generally located approximately ¼ mile south of North 60<sup>th</sup> Street, on the west side of Silver Creek Road; Section 15, Township 9 South, Range 6 East; Wildcat Township. Mr. Isaac stated that the petitioner had purchased a 20-acre tract of land from his neighbor, Randy Holle, in the fall of 2000, in order to construct a single family residence. Mr. Isaac stated that as part of the agreement, a restriction was placed on the deed that would allow Mr. Holle to continue to farm, in perpetuity, an approximate 8-acre portion. Mr. Isaac further explained that when the petitioner had decided to sell the house along with the 20-acre tract, he discovered that mortgaging the property with the deed restriction would be extremely difficult. Mr. Isaac said that, after exploring several options, the petitioner felt that the best course of action would be to

subdivide the tract, sell the restricted portion of the tract back to Mr. Holle, then plat and rezone the remaining 12-acres.

Mr. Isaac stated that the petitioner was proposing to rezone the property from “G-1” (General Agricultural) to “A-5” (Single Family Residential). Mr. Isaac pointed out that the Riley County Subdivision Regulations require that any division of land into parcels less than 20 acres must be platted and that the minimum lot area for a single-family dwelling in a “G-1” (General Agricultural) zoning district is 20 acres. Mr. Isaac stated that the Riley County Health Department staff had reviewed the plat and found it to be in compliance with the Riley County Sanitary Code. Mr. Isaac stated that the staff recommended approval of the request.

Chairman Larson called for comments from the petitioner.

David Soupene addressed the Board. Mr. Soupene stated that Mr. Isaac had covered the information well. Mr. Soupene stated that they had put a restriction on the new deed to prevent anyone from further subdividing the property. Mr. Soupene asked if the Board had any further questions.

Buck Gehrt asked how many months out of the year the cattle were on the neighboring pasture.

Mr. Soupene stated that it was mainly during the winter months.

Rebecca Mosier asked for clarification on the deed restriction.

Linda Weis, representative, addressed the Board. Ms. Weis introduced the contract buyers, Leon & Jennie Brown. Ms. Weis explained that Brown’s never intended to subdivide, but the 12 acres was all that was needed for the family. Ms. Weis stated obtaining a mortgage is very difficult when a lien or a deed restriction is already in place.

Chairman Larson called for proponents. Hearing none, Chairman Larson called for opponents.

Carl Sinn addressed the Board. Mr. Sinn stated that he owned the property to the south of the site proposed for rezoning. Mr. Sinn stated that he was part of the livestock feeding operation and that he was opposed to the rezoning due to floodplain issues in the area and the future of the neighboring confined animal feeding operation.

Eugene Sinn addressed the Board. Mr. Sinn stated that he owns cattle to the east of the subject property. Mr. Sinn echoed Carl Sinn’s concerns.

Glen Nelson addressed the Board. Mr. Nelson stated that his wife owned property across the road. Mr. Nelson stated that the rezoning would lead to possible subdivision of the property, even with the deed restriction. Mr. Nelson suggested that the Browns buy the additional eight acres and keep the 20-acre tract in tact. Mr. Nelson also stated that the property should remain general agricultural.

Melinda Sinn addressed the Board. Ms. Sinn stated that she was concerned that the operation

would be unable to expand.

Bob Isaac, Planner, stated that KDHE dictates that a confined animal operation can not expand in the direction of the house. Mr. Isaac stated that the zoning did not make a difference, nor did the distance to the property line.

Melinda Sinn pointed out that there was a twelve month hog farm in operation.

Chairman Larson called for any more opponents. Hearing none, Chairman Larson called for rebuttals from the proponents.

Linda Weis stated that the Brown's would not be farming the eight (8) acres. Ms. Weis stated that it would be better to leave it in agricultural production.

David Soupene stated that only one little corner of the property was in the floodplain.

Chairman Larson called for rebuttals from the opponents.

Glen Nelson stated that it was not critical to have the eight (8) acres farmed. Mr. Nelson stated that it could be turned into CRP.

Buck Gehrt asked if he was reading the staff report right when it stated that no other houses could be built on the 12 acres.

Bob Isaac affirmed.

Chairman Larson closed the public hearing.

Lorn Clement stated that it was unfortunate that the house was already there. Mr. Clement stated that the deed restriction should prohibit any further subdivision, but that he was uncomfortable subdividing the property down to 12 acres.

Tom Taul stated that the only regrettable decision he had made on the Board was splitting a 20 acre tract down to two (2) ten-acre lots. Mr. Taul stated that he understood the situation, but is uncomfortable with varying standards. Mr. Taul asked Mr. Soupene why he would ever grant anything in perpetuity.

Lorn Clement pointed out that they had seen other situations like this, but most were closer to areas that had been subdivided and rezoned. Mr. Clement stated that looking at the surrounding zoning on the map showed nothing but "G-1" (General Agricultural).

Rebecca Mosier asked what "perpetuity" meant.

Lorn Clement stated that it meant "forever."

Rebecca Mosier asked for clarification that Mr. Holle could farm the eight (8) acres forever.

Lorn Clement stated that it was apparently the agreement Mr. Holle and Mr. Soupene had negotiated.

Rebecca Mosier asked why the Brown's wouldn't continue to let Mr. Holle farm the eight (8) acres.

Tom Taul stated it was because the Brown's couldn't obtain a mortgage.

Rebecca Mosier asked if the Brown's would be willing to buy the 20 acres.

Linda Weis explained that there was a deed restriction currently on the property.

Rebecca Mosier asked why the Brown's weren't willing to allow Mr. Holle to continue to farm the eight (8) acres.

Mr. Isaac stated that it wasn't about that but a matter of it being extremely difficult for the buyer to obtain a mortgage.

Rebecca Mosier pointed out the Mr. Soupene was able to obtain a mortgage.

Mr. Isaac stated that he created it that way. Mr. Isaac stated that to sell the property with it's current restrictions through a mortgage was practically impossible. Mr. Isaac stated that the buyers would probably have to mortgage the 12 acres and buy the eight (8) acres with cash. Mr. Isaac pointed out that Mr. Holle would still have the right to farm the eight (8) acres. Mr. Isaac explained that the buyers would own it, but they couldn't build on it or use it.

Lorn Clement stated that they would own it and know that no one would ever build a house on it.

Bob Isaac stated that it still could be difficult for the buyer to come up with the cash for the additional eight (8) acres.

Linda Weis stated that the eight (8) acres was at the back of the property and would be inaccessible from the road. Linda Weis stated that there wouldn't be a house built back there.

Chairman Larson asked Mr. Holle what his personal view was and why he split the 20 acres off his property.

Mr. Holle stated that he saw no reason to deny the split. Mr. Holle stated that the 12 acres that the house is on was worthless as farm ground. Mr. Holle stated that it has terraces and waterways.

Chairman Larson asked for any other questions or comments from the Board.

Buck Gehrt stated that he was getting more confused.

Chairman Larson stated that it was a real problem.

Rebecca Mosier asked if it was possible for the property to remain ag and have some kind of special use, instead of rezoning it.

Monty Wedel, Director, stated that they cannot grant a variance for that sort of reduction according to the zoning regulations. Mr. Wedel added that there is still the issue of platting the tract. Any land subdivided into tracts less than 20 acres is required to be platted. Mr. Wedel stated there was no possibility to grant a variance.

Chairman Larson reminded the Board that they need to look at the Comprehensive Plan more closely and update it to deter things like this from happening.

Lorn Clement stated that he would be opposed to the request if the deed restriction wasn't already in place. Mr. Clement stated that the house is there and that the soil is not prime ag soil. Mr. Clement pointed out that by approving the request, the eight (8) acres would stay in production.

Bob Isaac stated that the Mr. Holle would also have to obtain a letter of agricultural exemption for the remaining eight (8) acres. Mr. Isaac stated that the Planning Department would be able to track the use of the land.

Lorn Clement stated that he was very uncomfortable with exceptions and just fixing things as the current way to handle this problem. Mr. Clement stated that the rules right now are a 20 acre minimum in an ag zone for a residence.

Chairman Larson stated that the problem he sees is that the house is already there. Chairman Larson said there would be no question if the house wasn't there. Chairman Larson stated that characteristically the Board has tried to preserve the houses that exist and work those into the land even though they don't like it.

Lorn Clement stated that the Board had been fairly pragmatic in its approach.

Rebecca Mosier asked about the people that make their livelihood farming around there. Ms. Mosier asked if there was any way that their expansion could be protected, because they were there before the house was built.

Bob Isaac stated that according to KDHE they would have to expand in the opposite direction or a different direction from that residence. Mr. Isaac stated to the Board that new tools would have to be developed to prevent this situation from happening.

Chairman Larson asked Mr. Isaac that if the Sinn (CAFO) wanted to expand, in which directions could they expand.

Mr. Isaac stated that any direction away from the residence. Mr. Isaac stated that as long as it wasn't in the general direction of the house. Mr. Isaac stated that they would basically be able to expand east or north.

Rebecca Mosier asked if expanding meant increasing the hog operation.

Mr. Isaac stated that it would include building new structures.

Monty Wedel stated that it would include expanding the lagoon.

Tom Taul asked if that just applied to the residence, not the fact that it is zoned "general ag" right now.

Bob Isaac stated that the zoning would not affect the expansion of the operation.

Tom Taul stated that the zoning of "A-5" would have no more adverse affect on the expansion than "G-1."

Bob Isaac stated that was correct. Mr. Isaac stated that the biggest problem with the "A-5" is that it might create the appearance of precedent, or so it appears. Mr. Isaac stated that by placing a restriction the deed preventing future subdivision of the property, the petitioners were trying to prevent the worsening of an already unpleasant situation.

Rebecca Mosier asked why Mr. Holle couldn't get rid of the perpetuity on the deed.

Bob Isaac stated that one of the objectives of the plan is to try to cut down on taking of prime agricultural soils out of production or eliminating productive crop land for residential purposes. Mr. Isaac explained that by doing it this way, the buyers can utilize an existing home with 12 acres and the 8-acre portion of land that wouldn't be used would remain in agricultural production. Mr. Isaac stated that this would be the upside of a bad situation.

Rebecca Mosier stated that the Browns could still go to Mr. Holle and allow him to farm it.

Mr. Wedel stated that there were other ways to do it, such as through a lease. Mr. Wedel stated that a lease could be a year-to year agreement.

Rebecca Mosier stated that Mr. Holle could be more flexible.

Tom Taul asked if the rezoning were to occur and someone wanted to split a 20-acre tract across the road, would the fact that the current property would be "A-5" enhance the probability that would occur.

Mr. Isaac said no. Mr. Isaac stated that if the property was 20 acres or more, it would not be subject to review regardless if there was nearby residentially zoned tracts or not. Mr. Isaac stated that if someone wanted to come along and acquire a 20-acre tract just south of the confined animal feeding operation, they could do it without Board approval. Mr. Isaac stated that if they wanted to subdivide and rezone a tract smaller than 20 acres, he would recommend denial due to it's close proximity to a confined animal feeding operation.

Lorn Clement stated that the Board's choice would be to help the family and approve it or

suggest that it doesn't sell unless someone can pay cash for the whole thing, and doesn't need a mortgage. Mr. Clement stated that the issue was to help them get a mortgage or not.

Rebecca Mosier stated that if Mr. Holle would flex on his perpetuity then the Brown's could get a mortgage.

Mr. Isaac stated that he didn't know the legal requirements for lifting the restriction. Mr. Isaac stated that he couldn't answer that question.

Rebecca Mosier stated that maybe they should get an answer and come back to the Board later. Ms. Mosier stated that she saw this action affecting one person vs. four people. Ms. Mosier asked if the Browns were willing to buy the 20 acres.

Mr. Brown stated that he hadn't known it to be an option.

Linda Weis stated that she didn't know what the price would be.

Lorn Clement stated that it might be a reason to table the request and wait.

Mr. Isaac stated that it would be a good idea to ask Mr. Holle if he would be willing to do that, possibly letting go of what is already a secured piece of farm ground.

Rebecca Mosier stated that she also saw families there whose livelihood is also farming.

Lorn Clement stated that he felt there was a problem in the past with the Board and appearances with fixing things. Mr. Clement stated that a reason they should table the request would simply be to say to the public that these don't just happen automatically. Mr. Clement stated that if you have a problem you better be very creative and try to explore all your options before you come to Board to ask us to go against the 20-acre minimum rule in an area that is all "G 1." Mr. Clement stated that he was very worried about the precedent setting aspects. Mr. Clement stated that the Board had several petitions recently that would give people the indication that if you have a problem you just go to the Planning and Zoning staff and it will be fixed. Mr. Clement stated that there was a good chance that it would be approved, but he suggested tabling the request and ask the parties to explore some options and perhaps come back. Mr. Clement stated that he thought Ms. Mosier was coming up with some good thoughts. Mr. Clement stated that the Board probably wouldn't resolve it tonight.

Tom Taul asked if it would be the same situation when you buy farm ground but do not own the mineral rights. Mr. Taul stated that when you went to sell it, you would be selling the land but not selling the mineral rights. Mr. Taul stated that in this situation they would own the land but not own the use to the land.

Linda Weis stated that was not the way it was legally viewed.

Tom Taul stated that maybe the Brown's should check with another mortgage company.

Bob Isaac stated that he had spoke with Todd Shepard (Charlson & Wilson) regarding the situation, and he stated that in this particular situation, unless the restriction could be lifted, it would be practically impossible to mortgage the property, and that most mortgage companies or lending institutions would be reluctant to take it. Mr. Isaac stated that they would not mortgage the whole 20 acres intact. Mr. Isaac stated that the original mistake was probably placing that restriction on the deed, but in essence it was for the goal of “we are only going to use what we feel we need, and we will allow our neighbor to continue to farm and keep the land in agricultural production.” Mr. Isaac stated that this was comparable with some of the goals and objectives of the Comprehensive Plan. Mr. Isaac stated that he would be recommending differently if the parcel wasn’t already developed, but the house is already there.

Mr. Wedel stated that if the Planning Department had another means, such as the Reserve Agricultural Tier, by which land was evaluated with a kind of LESA (Land Evaluation and Site Assessment) system, this situation could be a decent candidate for a home site.

Chairman Larson stated that he wondered if they could get rid of the restriction on the eight (8) acres. Chairman Larson also suggested that the Brown’s buy the whole 20 acres and make a new agreement or a long-term lease.

Buck Gehrt asked if any farmer wanted to build a house on his farm, wanted to get a loan just for the house, and surveyed out 3-5 acres for the farmstead, would that have to be rezoned.

Monty Wedel responded that situation has happened. Mr. Wedel stated that has been an issue with some of the mortgage companies and added that if the mortgage company had to have the deed to that acreage, then it would have to be platted and rezoned.

Bob Isaac explained that the Planning Department experienced situations involving extraneous farmsteads.

Linda Weis stated that the Soupenes did not want to sell the home, but due to their current situation, they were looking to downsize.

Mrs. Soupene addressed the Board. Mrs. Soupene stated that they understood the importance of farming, and that the original 20-acre split was not a mistake.

Chairman Larson stated that the Board sets precedence for the County. Chairman Larson suggested that the Board move forward to address the other agenda items.

Buck Gehrt moved to table the request until the next Riley County Planning Board meeting. Tom Taul seconded.

Rebecca Mosier stated that she appreciated what Mrs. Soupene was saying, but that the Board was trying to protect the neighboring farmers. Ms. Mosier stated that if the Board made it residential, the neighboring farmers couldn’t continue their Confine Animal Feeding Operation the way they might in the future.



Bob Isaac explained that the expansion had nothing to do with the zoning; it was the fact that there was a residence already there.

Rebecca Mosier stated that she thought that if the parcel remained agriculture, the Confine Animal Feeding Operation could still expand.

Bob Isaac stated that was incorrect. Mr. Isaac clarified that they couldn't expand because there was a house there. Mr. Isaac stated that since the item was being tabled, they would have to look at other options before the next meeting.

Rebecca Mosier stated that she did not see the sense in tabling the petition now. Ms. Mosier stated that her purpose was keeping the subject property 20 acres so that it would not restrict the Sinns.

Chairman Larson asked if there was any other discussion.

Lorn Clement stated that he wished the surrounding area wasn't all ag. Mr. Clement stated that he was concerned that if they granted the petition right off the bat, it would send a message of easy fixes. Mr. Clement stated that he was very reluctant to do that.

Mr. Isaac stated this was one of the examples that illustrated the need to update the Comprehensive Plan.

Chairman Larson asked if the situation could be handled within the parties.

David Soupene stated that they had explored the other options.

Randall Holle stated that regardless of what was done, it would still be the same house, the same septic, etc.

Tom Taul stated that situations change and that he understands the request. Mr. Taul believes that it would cause more requests like it in the future.

Rebecca Mosier stated that since the fact had been presented that the Browns had already sold their house, she didn't know how to handle the motion.

Buck Gehrt withdrew the motion to table the request.

Rebecca Mosier moved to recommend approval of the rezoning request from "G-1" (General Agricultural) to "A-5" (Single Family Residential) to the Board of County Commissioners. Buck Gehrt seconded.

Lorn Clement moved to amend the motion to include that the deed restriction is clear to prevent any further subdivision of the subject property in the future. Buck Gehrt seconded. Amendment carried 3 -2.

Motion to recommend approval of the rezoning request from “G-1” (General Agricultural) to “A-5” (Single Family Residential) with the understanding that the deed restriction is clear to prevent further subdivision in the future to the Board of County Commissioners. Motion carried 4 – 1.

Mosier moved to approve the plat as presented. Lorn Clement seconded. Motion carried 4 – 1.

Bob Isaac announced that the petition would go before the Board of County Commissioners on April 26<sup>th</sup>, 2004, at 10:50 AM.

**DISCUSSION OF DRAFT AMENDMENT TO ZONING REGULATIONS REGARDING COMMERCIAL AND NONCOMMERCIAL WIND ENERGY CONVERSION SYSTEMS**

Monty Wedel presented the draft amendment of the Wind Energy Conversion System regulations.

Mr. Wedel stated that a public forum was being held by the Wind and Prairie Task force in Manhattan on April 28th at the Fire Station on Denison Avenue. Mr. Wedel stated that the Task Force would also be holding a public forum in El Dorado on April 29th.

Mr. Wedel started the draft regulations on Page 13, Reclamation. Mr. Wedel discussed clarifying when a turbine is considered abandoned. Mr. Wedel stated that staff recommended that it be 20 percent of normal operation.

Lee Rucker asked what percentage the turbines would run at now.

Hoffman stated that would be 20 percent of normal, considering that you would have on average 100 percent of power.

The Board agreed to 20 percent of normal operation.

The Board discussed depth of reclamation.

Mr. Wedel moved on to Permit Procedures and Requirements on Page 13.

Roger Craft asked if the property was transferred to a different owner, if the new owner would be held responsible for the reclamation.

Monty Wedel stated that was what the regulations were meant to do.

Monty Wedel reviewed the permitting process, specifically, setting the application fee at the principal industrial building permit rate.

Mr. Wedel announced that they had reached the end of the proposed regulations and asked the Board what they wanted to do.

Dick Seaton stated that he had a suggestion for Paragraph 21, of Reclamation, to include the wording "company/companies approved by the BOCC."

Monty Wedel asked if the Board wanted to start reviewing the document from the beginning.

Lorn Clement stated that he felt it was only fair to the people that had traveled considerable distances to watch the proceedings.

Tom Finney asked what kind of protection the townships had in regard to the roads that would be affected by wind farm construction.

Monty Wedel pointed out Page 8, Paragraphs 13 & 14 of the Application Requirements.

Wayne Hoffman stated that agreements were typically made with the County and townships to accommodate any equipment used. Mr. Hoffman stated that the company would also agree to pay for damages. Mr. Hoffman clarified that if it was an unimproved road, then it would be returned to its original state. Mr. Hoffman stated that it was standard operating procedure.

Roger Craft asked if that included wear and tear for the duration.

Mr. Hoffman stated that was part of the agreement.

Monty Wedel stated that they could consider adding road reclamation.

Ron Klataske stated that the Board had pretty much covered construction and maintenance, but asked about the impact on the roads during decommissioning.

Skip Pickering asked who would provide the equipment and material to do the roads.

Chairman Larson stated that from what he understood, the company was ultimately responsible.

Chairman Larson asked if there were any other questions.

Monty Wedel asked if the Board wanted to go over the definitions.

Lorn Clement stated that he felt the Board should take time to review all of the sections.

Monty Wedel stated that the majority of the definitions would be placed in a specific section for wind farms within the Zoning Regulations. Mr. Wedel further explained that two main definitions would be placed in Section 2 Definitions, in the Riley County Zoning Regulations.

The Board reviewed and discussed the definitions.

Monty Wedel stated that the WECS moratorium was set to end on May 7th. Mr. Wedel stated that the BOCC was willing to extend it, but wanted to know what the Planning Board would like to do.

The Board discussed waiting on the recommendation from the Wind and Prairie Task Force which was to be made to the Governor by May 31, 2004.

The Board discussed holding a special meeting.

Chairman Larson called for questions or comments.

Ron Klataske commended the Board for their diligence.

Wayne Hoffman stated that he was unclear about the end date. Mr. Hoffman voiced his frustration at the lengthy regulation drafting process. Mr. Hoffman stated that he would like to see the maximum height limit increased by five (5), to accommodate the newest state -of-the-art turbines.

Lee Rucker stated that the Board should take as much time as possible.

#### **UPDATE - JOINT LAND USE STUDY (JLUS)**

Monty Wedel gave the update on the Joint Land Use Study. Mr. Wedel stated that the policy committee recommended EDAW, Inc and that a contract was currently being negotiated.

#### **UPDATE - RILEY COUNTY COMPREHENSIVE PLAN**

Due to the late hour of the evening, Chairman Larson suggested postponing the discussion on the Riley County Comprehensive Plan until the next meeting.

The meeting was adjourned at 10:25 pm.